IN THE HGIH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 22/2004

Mrs. Lucia Dias,
major of age, c/o. Paulo Fernandes,
Resident of House No. 364,
Massordem Road,
Valpoi, Sattari Taluka, Goa. ..... Appellant.

V/s.

Mr. Gloria Fabiao Dias,
major of age,
son of Nocolau Dias,
Resident of House No.190,
Igramol, Quepem, Goa. ..... Respondent.

Mr. S. S. Kantak and Ms. Rakhi Chodankar, Advocates for the appellant.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Shambhavi Rao, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 16TH NOVEMBER, 2006.

ORAL JUDGMENT :

Heard both sides.

2. The unsuccessful defendant has preferred this appeal against the interim order passed by the Civil Judge, Sr. Division, Bicholim whereby it was directed that the temporary injunction was allowed inasmuch as that

during the presence of the plaintiff in matrimonial house, he shall administer the property of the couple without exclusion of the exclusive properties of the defendant and the defendant may manage the said properties during the plaintiff's impediment or absence. As such, since the plaintiff was then in Goa residing in the matrimonial house, the defendant was directed to and over to the plaintiff the keys of the two vehicles i.e. Toyota Qualis Air Conditioned jeep bearing registration No.GA-02-S-0141 and TVs Scooty bearing registration No.GA-02-9559 till further orders within the specified time. The impugned order is challenged on various grounds, including the legal provision as contained in Articles 1109(5), 1117 and 1118 of the Family Laws applicable in Goa.

3. The learned Counsel for the appellant submits that the process of recording of evidence has already commenced and the plaintiff is under cross-examination and, therefore, it is obvious that the suit would be adjudicated on merits within a couple of months, especially if direction is issued to the lower Court. It may also be noted that the bone of contention is the two vehicles, one four wheeler and other two wheeler. Instead of going into the details of the factual matrix vis-a-vis, the law applicable to the dispute, I am of the view that interim arrangement, pending the disposal of the suit itself on merits would be called for in the

interest of justice as well as both the parties, because the adjudication of this interim application, at the appellate stage finally is likely to create complications, especially when the suit is on the verge of adjudication of merits finally.

4. It is evident that the learned trial Judge came to the conclusion that since the plaintiff-husband was in India, both the vehicles should be handed over to him by the defendant-wife till further orders for his own use while in India. The learned Counsel for the respondent makes a statement that as per his instructions, the plaintiff is presently in India and obviously is in country because the suit is part-heard and he is under cross-examination. Under the circumstances, the interest of justice would be met if one of the vehicles is made available for the use of the plaintiff; whereas the other vehicle is made available for the use of the defendant as an interim arrangement, pending the adjudication of the suit on merits and subject to the decision of the trial Court.

5. Taking into account all the relevant aspects and factual position, I am of the view that it would be befitting if the plaintiff is allowed to use the four wheeler vehicle while in India; whereas the two wheeler is left for the use of the defendant as an interim arrangement.

6. Therefore, it is directed that the trial Court shall dispose of the suit within a period of two months from the date of receipt of writ of this Court. It is needless to say that while adjudicating the suit, the trial Court shall take into account the relevant provisions of the Family Laws applicable to the parties with specific reference to Articles 1109(5), 1117 and 1118 thereof. In the meantime, the order passed by the lower Court shall stand modified to the effect that the four wheeler i.e. the Toyota Qualis Air Conditioned jeep bearing registration No.GA-02-S-0141 along with its keys shall be handed over to the plaintiff-husband within a period of one week and the two wheeler i.e. the TVs Scooty bearing registration No.GA-02-9559 would remain in the custody of the defendant-wife, subject to adjudication of the dispute by the trial Court. In case the plaintiff-husband wants to leave India during the pendency of the trial, the vehicle shall be handed over to the defendant under direction of the trial Court, pending final adjudication. Both the parties are directed to make use of the said vehicles carefully and in such a manner that no harm is reached to the vehicles. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.